

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)

v.)

(3) DAVID LYNN BROWNING)
_____)

DOCKET NO. 5:15CR15-RLV

FACTUAL BASIS

NOW COMES the United States of America, by and through Jill Westmoreland Rose, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. This Factual Basis is not a statement of the defendant, and, at this time, the defendant may not have provided information to the United States about the offenses to which the defendant is pleading guilty, or the defendant's relevant conduct, if any.

By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the *United States Sentencing Guidelines* or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a) unless the defendant's right to object to such particular fact is explicitly reserved below. The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to object and which are relevant to the Court's guideline computations, to 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

1. The defendant, David Lynn Browning (hereinafter referred to as "Browning"), along with Steven Chase – aka [REDACTED], and Michael Fluckiger – aka "[REDACTED]" operated a website dedicated to the advertising and distribution of child pornography between August 19, 2014 and March 4, 2015.^① The website had three administrators, including Fluckiger and Chase, and numerous moderators, including Browning. The computer server hosting the site was located in Lenoir, North Carolina. Browning administered the website from his residence in Kentucky.^②
2. Users were required to log on with an existing account or register a new account in order to access the website. The website was divided into forum groups, each dedicated to a specific topic, all of which relate to child exploitation and the trading of sexually explicit images of children. Forum group topics included – "[REDACTED]"

① The ability to operate and control the website(s) varied amongst the individual defendants.

② While Browning admits his role as a moderator, the specific application of the terms "administrator" at this time is in question and subject to specification.

██████████ Users posted text, images, and video files that could be accessed and downloaded by other users. For example, a review of the ██████████ forum showed 150 threads/topics, which included a total of 1,749 posts/replies. Many of the threads included images of child pornography depicting infant and toddler-aged children posed to expose their genitals or being subjected to sexually explicit conduct by adults. Examples of threads in the ██████████ forum include:

- a. On February 3, 2015, the user "██████████" posted a topic entitled "██████████" in the forum "██████████" that contained numerous images depicting child pornography of a prepubescent or early pubescent female. One of these images depicted the female being orally penetrated by the penis of a naked male.
 - b. On January 30, 2015, the user "██████████" posted a topic entitled "██████████" in the forum "██████████" that contained hundreds of images depicting child pornography of a prepubescent female. One of the images depicted the child being orally penetrated by the penis of a male.
 - c. On September 16, 2014, the user "██████████" posted a topic entitled "██████████" in the "██████████" forum that contained four images depicting child pornography of a prepubescent female and a hyperlink to an external website that contained a video file depicting what appeared to be the same prepubescent female. Among other things, the video depicted the prepubescent female, who was naked from the waist down with her vagina and anus exposed, lying or sitting on top of a naked adult male, whose penis was penetrating her anus.
3. The website also had an "Administration" section or forum that was accessible only to the Administrators and Moderators where they could communicate about the website. As a Global Moderator, Browning was heavily involved in the day to day operations of ██████████. His responsibilities included deleting content deemed to be off-topic or inappropriate, moving content to the appropriate forum if posted in the wrong location, and banning users that violated the rules of the website. Examples of moderator actions taken by Browning include:
- a. On March 3, 2015, Browning replied to a thread entitled, "██████████" and stated, "I edited the title to include "Toddler Material"...Hopefully those that don't care for kids that young will simply ignore the thread now."
 - b. On February 27, 2015, Browning moved a thread entitled, "██████████" from the forum "██████████" to the section "██████████".

- c. On February 26, 2015, Browning moved a thread entitled, '[REDACTED]' from the forum '[REDACTED]' to the section '[REDACTED]'.
 - d. On February 24, 2015, Browning created a thread entitled, '[REDACTED]' in the forum '[REDACTED]'. In the thread, Browning provided information to users of '[REDACTED]' that would help users of '[REDACTED]' avoid detection by law enforcement. Browning stated, "It's amazing how many times I have to deal with a post that has been reported by a member that has a link requiring javascript. And above that...noticing how many people have tahnked the OP for the link...meaning that they have actually emabled script to see it...Seriously, people?"
 - e. On February 21, 2015, Browning replied to a thread entitled, '[REDACTED]' which was created by '[REDACTED]' user '[REDACTED]'. User '[REDACTED]' stated that he was "looking for vids of very young girls getting fucked in there pussy's, ages 1-10 preferred". In his reply to the thread, Browning provided the name of a series of images that depict a prepubescent female who appears to be under the age of 10 being vaginally penetrated by an adult male's penis and ejaculated on. The information provided by Browning would have allowed '[REDACTED]' or any other user of '[REDACTED]' to search the content of '[REDACTED]' and find images and videos.
4. Browning joined the website on November 13, 2014. Between November 13, 2014 and March 4, 2015, Browning spent over 700 hours logged in to '[REDACTED]'. As of the time '[REDACTED]' was taken offline, Browning had made over 1,000 posts, sent over 140 messages, and received over 180 private messages on '[REDACTED]'. Browning also designed a logo that was eventually selected to be the logo for the website. Browning also made many posts that contained child pornography.
5. On January 20, 2015, Browning created a thread entitled '[REDACTED]' in the forum '[REDACTED]'. The thread contained, among other things, a hyperlink to a set of 16 images that appeared to depict two prepubescent females. By clicking on the link and downloading the images, an FBI Agent observed that three of the images are focused on the exposed, nude genitals and anus of one of the prepubescent females who can be seen using her fingers to spread her genitals open in two of the images. The image set has a caption indicating that it was generated from a video which was approximately 19 minutes and 56 seconds in duration. The thread created by Browning contained what purported to be a link to the full video. It was not available when FBI Agents attempted to download it.
6. On January 21, 2015, Browning created a thread entitled, '[REDACTED]' in the forum '[REDACTED]'. In the thread, Browning stated, "Very

little nudity in this one but these two make out for almost the entire twenty minutes of the clip...If watching two preteen girls make out, this is going to make you happy". The thread contained, among other things, a hyperlink to a set of 16 images. By clicking on the link and downloading the images, an FBI Agent observed that the images appeared to depict the same two prepubescent females described in the preceding paragraph. The thread also contained a hyperlink to a video file. A copy of the video was downloaded and reviewed by FBI Agents. At one point in the video one of the prepubescent females stands up, pulls down her shorts, exposes her nude genitals and briefly rubs her finger across her genitals. Throughout the rest of the 20 minute and 24 second video the prepubescent females are shown kissing, hugging, and groping each other's clothed buttocks and genitals for several minutes. The post also contained a link to the thread described in the preceding sub-paragraph.

7. On January 24, 2015, Browning replied to a thread entitled "[REDACTED]" which was created by user "[REDACTED]" on January 24, 2015. "[REDACTED]" created the thread to request a specific set of images be posted on "[REDACTED]". "[REDACTED]" stated, "[REDACTED]". Browning replied stating, "Dunno about the pics but here's an awesome video clip of the young one getting a little vibrator play from her step-dad or someone". The post by Browning contained a hyperlink to a separate thread on "[REDACTED]" entitled "[REDACTED]" which was posted in the forum "[REDACTED]". The thread contained a hyperlink to a set of 25 images. By clicking on the hyperlink and downloading the images, an FBI Agent observed that several of which were focused on the exposed nude genitals of a prepubescent female. In several images an adult male can be seen inserting a pink object in and around the genitals of the prepubescent female.
8. The website was technically designed to facilitate anonymous communication by users. Only a user who had installed special software on the user's computer could access the website. That software enabled the communications of website users to be routed through multiple computers in order to prevent communications from being traced back to the users. Thus, the defendant and the users of the website believed they were operating in complete anonymity. The website contained a total of 117,773 posts, 10,622 total topics, and 214,898 user accounts at the time it was shut down. Approximately 50,000 of images and videos of child pornography were distributed via the website.
9. According to the National Center for Missing and Exploited Children ("NCMEC"), the images and videos distributed via the website included at least 283 identified child victims.
10. On July 29, 2015, a federal search warrant was executed at Browning's residence in Kentucky. During an interview, Browning told agents that his sexual interest was girls ages seven to twelve. Browning also acknowledged that he used the names

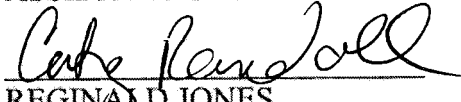
██████████ and "██████████" on ██████████ Browning also admitted that he spent four to five hours a day performing moderator duties on ██████████ and that his moderator account on ██████████ was ██████████. Browning further confessed to creating a logo for the ██████████ website. (3)

(3) While the defendant does not dispute his general culpability, the specific facts and frequency of events and postings is difficult to ascertain by the defense considering the sparse nature of the discovery and the access available. This is a general objection applying to the entire factual basis.

JILL WESTMORELAND ROSE
UNITED STATES ATTORNEY



CORTNEY RANDELL

ASSISTANT UNITED STATES ATTORNEY


for REGINALD JONES
TRIAL ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Indictment, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Indictment, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis with the exception of those facts to which I have specifically reserved the right to object, and understands that it may be used for the purposes stated above.


Steven Meier, Attorney for Defendant

DATED: 12/8/15